

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff Investment
Securities LLC,

Plaintiff,

v.

ABN AMRO BANK (IRELAND) LTD. (f/k/a
FORTIS PRIME FUND SOLUTIONS BANK
(IRELAND) LIMITED) and

ABN AMRO CUSTODIAL SERVICES
(IRELAND) LTD. (f/k/a FORTIS PRIME
FUND SOLUTIONS CUSTODIAL
SERVICES (IRELAND) LTD.),

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-05355 (SMB)

**TRUSTEE'S DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON
APPEAL AND STATEMENT OF ISSUES TO BE PRESENTED**

Irving H. Picard, as trustee (the "Trustee") for the liquidation of the business of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa *et seq.*, and the substantively consolidated Chapter 7 estate of Bernard L. Madoff, hereby submits under Rule 8009 of the Federal Rules of Bankruptcy Procedure and Local Rule 8009-1 of the Local Bankruptcy Rules for the Southern District of

New York, this designation of items to be included in the record on appeal and statement of issues to be presented with respect to the Trustee's appeal in the above-captioned adversary proceeding (the "Adversary Proceeding") of the Final Judgment (the "Final Judgment," a copy of which is annexed hereto as **Exhibit 1**).

I. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

The Bankruptcy Court and the District Court issued decisions and orders in this Adversary Proceeding that merged into the Final Judgment being appealed. Accordingly, the designation of items to be included in the record on appeal contains entries from the dockets of both the Bankruptcy Court and District Court. Each designated item shall also include any and all exhibits and documents annexed to or referenced within such item.

A. *Picard v. ABN AMRO Bank (Ireland) et al.*, Adv. Pro. No. 10-05355, Bankruptcy Court Designations

The Trustee designates for inclusion in the record on appeal the items listed below, the pertinent docket entries filed in this Adversary Proceeding, including parallel citations to the main docket, *Picard v. ABN AMRO Bank (Ireland) et al.*, Adv. Pro. No. 10-5355 (SMB) (Bankr. S.D.N.Y.) and *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re BLMIS)*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y.).

Designation Number	Date	ECF Number (APN 10-05355)	ECF Number (APN 08-01789)	Docket Text
1	02/19/2020	190	19328	Notice of Appeal (related document(s)189) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Exhibit Final Judgment # 2 Exhibit MTLA Decision # 3 Exhibit Decision

Designation Number	Date	ECF Number (APN 10-05355)	ECF Number (APN 08-01789)	Docket Text
				Denying Discovery # 4 Exhibit Order Denying Discovery # 5 Exhibit Opinion and Order)(Sheehan, David) (Entered: 02/19/2020)
2	02/06/2020	189	19295	So Ordered Stipulation Signed On 2/5/2020. Re: Denying The Trustees Motion For Leave To Amend And Entering Final Judgment (Barrett, Chantel) (Entered: 02/06/2020)
3	01/23/2020	188	19273	Written Opinion Signed on 1/23/2020/ Re: Memorandum Decision Denying Trustee's Motion for Leave to File Amended Complaint (related document(s) 166, 165 (Barrett, Chantel) (Entered 1/23/2020)
4	10/25/2019	185		Transcript regarding Hearing Held on 10/25/19 at 10:19 AM RE: Trustee's Motion for Leave to Amend. Remote electronic access to the transcript is restricted until 12/26/2019. The transcript may be viewed at the Bankruptcy Court Clerk's Office. [Transcription Service Agency: Veritext Legal Solutions.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 10/4/2019. Statement of Redaction Request Due By 10/18/2019. Redacted Transcript Submission Due By 10/28/2019. Transcript access will be restricted through 12/26/2019. (Cales, Humberto) (Entered: 10/18/2019)
5	05/23/2019	179	18771	Response /Reply Memorandum of Law in Further Support of Trustee's Motion for Leave to File Second Amended Complaint (related document(s)165, 174)

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				filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Sheehan, David) (Entered: 05/23/2019)
6	04/29/2019	175	18705	Declaration in Support of Opposition to Trustee's Motion for Leave to File Second Amended Complaint filed by Thomas J. Giblin on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F # 7 Exhibit G # 8 Exhibit H # 9 Exhibit I) (Giblin, Thomas) (Entered: 04/29/2019)
7	04/29/2019	174	18704	Opposition Brief to the Trustee's Motion for Leave to File Second Amended Complaint filed by Christopher Harris on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Harris, Christopher) (Entered: 04/29/2019)
8	02/22/2019	166	18509	Declaration of Regina Griffin In Support of the Trustee's Motion for Leave to File Second Amended Complaint (related

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
				document(s)165) filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Exhibit A - Proposed Second Amended Complaint # 2 Exhibit B - Complaint in Picard v. Tremont Group Holdings, Inc. # 3 Exhibit C - Proposed Order) (Sheehan, David) (Entered: 02/22/2019)
9	02/22/2019	165	18508	Motion to Allow/ Memorandum of Law in Support of Trustee's Motion for Leave to File Second Amended Complaint filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Notice of Motion) (Sheehan, David) (Entered: 02/22/2019)
10	06/19/2018	158	17696	Order Signed On 6/18/2018 Denying Trustee's Motion For Discovery Pursuant To Rule 26(d) Of The Federal Rules Of Civil Procedure (Related Lead Case #08-1789, ECF document(s)#17696, #16724, #16924, #16428, #17640). (Mercado, Tracey) (Entered: 06/19/2018)
11	06/05/2018	155	17640	Written Opinion Signed On 6/5/2018 Re: Memorandum Decision Denying The Trustee's Motion For Discovery Pursuant To Rule 26(d) Of The Federal Rules Of Civil Procedures,(Related Lead Case#08-01789 ECF Docs.#16927, #17283, #4072, #7827, #16428, #7828, #16724, #16924, #3083). (Mercado, Tracey) (Entered: 06/05/2018)

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
12	03/01/2018		17438	Transcript regarding Hearing Held on 2/8/2018 2:05 PM RE: (Amends Doc # 17285) Trustee's Motion for an Order Authorizing Limited Discovery on Good Faith Issue pursuant to Fed. R. Civ. P. 26(d)(1)..et al... Remote electronic access to the transcript is restricted until 5/30/2018. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: Veritext Legal Solutions.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 3/8/2018. Statement of Redaction Request Due By 3/22/2018. Redacted Transcript Submission Due By 4/2/2018. Transcript access will be restricted through 5/30/2018. (Ortiz, Carmen) (Entered: 03/28/2018)
13	2/23/2018	151	17283	Letter in Response to Charts Filed by Certain Defendants (related document(s)150) Filed by Regina Griffin on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Griffin, Regina) (Entered: 02/23/2018)
14	02/13/2018	150	17234	Letter in response to Judge Bernstein's February 8, 2018 request Filed by Christopher Harris on behalf of ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Attachments: # 1 Exhibit A)(Harris, Christopher) (Entered: 02/13/2018)

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
15	11/20/2017	143	16926	Declaration of Howard L. Simon in Further Support of the Trustee's Omnibus Motion for Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) filed by Howard L. Simon on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Exhibit 1) (Simon, Howard) (Entered: 11/20/2017)
16	11/20/2017	142	16927	Declaration of Regina Griffin in Further Support of the Trustee's Omnibus Motion for Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (related document ECF No. 124) filed by Regina Griffin on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. (Attachments: # 1 Exhibit 1) (Griffin, Regina) (Entered: 11/20/2017)
17	11/20/2017	141	16924	Reply to Motion /Trustee's Reply Memorandum of Law in Further Support of Motion for Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (08-01789) filed by Regina Griffin on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. (Attachments: # 1 Exhibit 1) (Griffin, Regina) (Entered: 11/20/2017)

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
18	10/06/2017	136	16734	Declaration of Amod Kumar in Support of the ABN Defendants' Supplemental Memorandum of Law in Support of Defendants' Opposition to the Trustee's Motion for Limited Discovery on the Good Faith Issue (related document(s)134, 65, 133) filed by Christopher Harris on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Attachments: # 1 Exhibit A--Certificate of Cancellation) (Harris, Christopher) (Entered: 10/06/2017)
19	10/06/2017	135	16733	Declaration of Thomas J. Giblin in Support of the ABN Defendants' Supplemental Memorandum of Law in Support of Defendants' Opposition to the Trustee's Motion for Limited Discovery on the Good Faith Issue (related document(s)134, 65, 133) filed by Christopher Harris on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Attachments: # 1 Exhibit A--Subpoena # 2 Exhibit B--Letter Agreement # 3 Exhibit C--Proffer) (Harris, Christopher) (Entered: 10/06/2017)

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
20	10/06/2017	134	16732	Memorandum of Law /ABN Defendants' Supplemental Memorandum of Law in Support of Defendants' Opposition to the Trustee's Motion for Limited Discovery on the Good Faith Issue (related document(s)65) filed by Christopher Harris on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Harris, Christopher) (Entered: 10/06/2017)
21	10/06/2017	133	16724	Memorandum of Law /Consolidated Memorandum of Law in Opposition to the Trustee's Motion for Discovery on the Good Faith Issue, with Exhibits 1 and 2, dated October 6, 2017 (related document(s)65) filed by Christopher Harris on behalf of ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), ABN AMRO Retained Custodial Services (Ireland) Limited. (Harris, Christopher) (Entered: 10/06/2017)
22	07/24/2017		16428	Order Signed On 7/24/2017. Re: Order Concerning Further Proceedings On Trustees Motion For Leave To Replead And For Limited Discovery(Barrett, Chantel) (related to Document Number

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
				16313) Modified on 7/24/2017 (Porter, Minnie). (Entered: 07/24/2017)
23	12/18/2014	85	8800	So Ordered Order Signed On 12/10/2014.Re: Concerning Further Proceedings On Extraterritoriality Motion And Trustees Omnibus Motion For Leave To Replead And For Limited Discovery (related document(s)8630) (Greene, Chantel) (Entered: 12/17/2014)
24	11/12/2014	78	8440	Response - Trustee's Response to Limited Objections to Proposed Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee's Omnibus Motion for Leave to Replead and for Limited Discovery (related document(s)80) filed by David J. Sheehan on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. with hearing to be held on 11/19/2014 at 10:00 AM at Courtroom 723 (SMB) (Sheehan, David) (Entered: 11/12/2014)
25	10/02/2014	69	8060	Letter /October 2, 2014 Letter to Judge Bernstein regarding Trustee's Omnibus Motion for Leave to Replead and Defendants' Request for Further Proceedings on Extraterritoriality Motion (related document(s)71) filed by David J. Sheehan on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. (Sheehan, David) (Entered: 10/02/2014)

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
26	08/28/2014	67	7828	Declaration of Regina Griffin in Support of the Trustee's Memorandum of Law in Support of Omnibus Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (related document(s)71, 72) filed by David J. Sheehan on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. with hearing to be held on 10/22/2014 at 10:00 AM at Courtroom 723 (SMB) (Attachments: # 1 Exhibit 1 # 2 Exhibit A # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit E) (Sheehan, David) (Entered: 08/28/2014)
27	08/28/2014	66	7827	Memorandum of Law /Trustee's Memorandum of Law in Support of Omnibus Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) (related document(s)71) filed by David J. Sheehan on behalf of Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff. (Attachments: # 1 Exhibit 1) (Sheehan, David) (Entered: 08/28/2014)
28	08/28/2014	65	7826	Motion to Allow/Notice of Motion for Leave to Replead Pursuant to Fed. R. Civ. P. 15(a) and Court Order Authorizing Limited Discovery Pursuant to Fed. R. Civ. P. 26(d)(1) filed by David J. Sheehan on behalf of Irving H. Picard, Esq., Trustee for the Substantively

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
				Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff with hearing to be held on 10/22/2014 at 10:00 AM at Courtroom 723 (SMB). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) (Sheehan, David) (Entered: 08/28/2014)
29	07/30/2014	63	7547	Motion to Withdraw the Reference Returned to Bankruptcy Court, See Case No. 08-1789 Doc #7546 (White, Greg) (Entered: 07/30/2014)
30	07/03/2012	42		Amended Complaint against ABN AMRO BANK (IRELAND) LTD. (f/k/a FORTIS PRIME FUND SOLUTIONS BANK (IRELAND) LIMITED), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), Rye Select Broad Market XL Fund, LP Filed by David J. Sheehan on behalf of Irving H. Picard, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, and Bernard L. Madoff. (Attachments: # 1 Exhibit A# 2 Exhibit B# 3 Exhibit C# 4 Exhibit D# 5 Exhibit E# 6 Exhibit F# 7 Exhibit G# 8 Exhibit H# 9 Exhibit I# 10 Exhibit J# 11 Exhibit K# 12 Exhibit L) (Sheehan, David) (Entered: 07/03/2012)
31	09/29/2011	20		Declaration of Christopher Harris in Support of Defendants' Motion to Withdraw the Reference to the Bankruptcy Court (related document(s) 18) filed by Christopher Harris on behalf of ABN AMRO Bank (Ireland) Ltd. (f/n/a Fortis Prime Fund Solutions Bank (Ireland) Limited), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
				Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.). (Harris, Christopher) (Entered: 09/29/2011)
32	09/29/2011	19		Memorandum of Law in Support of Defendants' Motion to Withdraw the Reference to the Bankruptcy Court (related document(s) 18) filed by Christopher Harris on behalf of ABN AMRO Bank (Ireland) Ltd. (f/n/a Fortis Prime Fund Solutions Bank (Ireland) Limited), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.). (Harris, Christopher) (Entered: 09/29/2011)
33	09/29/2011	18		Motion to Withdraw the Reference -- Notice of Motion of Defendants ABN AMRO Bank (Ireland) Ltd. and ABN AMRO Custodial Services (Ireland) Ltd. to Withdraw the Reference to the Bankruptcy Court filed by Christopher Harris on behalf of ABN AMRO Bank (Ireland) Ltd. (f/n/a Fortis Prime Fund Solutions Bank (Ireland) Limited), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.). (Harris, Christopher) (Entered: 09/29/2011)
34	12/8/2010	1		Complaint against ABN AMRO Bank (Ireland) Ltd. (f/n/a Fortis Prime Fund Solutions Bank (Ireland) Limited), ABN AMRO Custodial Services (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Custodial Services (Ireland) Ltd.), Rye Select Broad Market XL Fund, LP, Rye Select Broad Market XL Portfolio Limited. Nature(s) of Suit: (14 (Recovery of money/property - other)) Filed by

Designation Number	Date	ECF Number (APN 10- 05355)	ECF Number (APN 08- 01789)	Docket Text
				Irving H. Picard, Esq., Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff. (Murphy, Keith)(This Document is Unsealed Pursuant to Order Dated 2/24/2011 (Related Document 3) Modified on 2/24/2011 (Richards, Beverly). (Entered: 12/08/2010)

B. *Picard v. ABN AMRO Bank (Ireland) et al.*, No. 11-cv-6877 (JSR) and *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12-mc-00115, District Court Designations

The Trustee designates for inclusion in the record of appeal the items listed below, the pertinent docket entries filed in *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC (In re Madoff Sec.)*, No. 12-mc-00115 (JSR) (S.D.N.Y.).

Designation Number	Date	ECF Number (12-mc- 115)	Docket Text
1	04/28/2014	524	OPINION AND ORDER #104291: Accordingly, the Court concludes that, in a SIPA proceeding such as this, a defendant may succeed on a motion to dismiss by showing that the complaint does not plausibly allege that that defendant did not act in good faith. Because this determination must be made on the basis of the specific allegations in the Trustee's various complaints, the Court, having set out the general framework, hereby leaves it to the Bankruptcy Court to determine in any given instance whether the foregoing standards have been met. Accordingly, the Court directs that the following adversary proceedings be returned to the Bankruptcy Court for further proceedings consistent with this

Designation Number	Date	ECF Number (12-mc-115)	Docket Text
			Opinion and Order: (1) those cases listed in Exhibit A of item number 197 on the docket of 12 Misc. 115; and (2) those cases listed in the schedule attached to item number 468 on the docket of 12 Misc. 115 that were designated as having been added to the "good faith" consolidated briefing. (Signed by Judge Jed S. Rakoff on 4/27/2014) (mro) Modified on 5/5/2014 (ca). (Entered: 04/29/2014)
2	06/07/2013	473	ORDER: Accordingly, the clerk is hereby directed to docket the below-listed orders and/or decisions issued by the Court in connection with the consolidated proceedings as described below. The following orders shall be docketed in cases with respect to which "Stern v. Marshall" is listed in the final column of the schedules included as Exhibit B hereto: Order, No. 12 MC 115, ECF No. 4 (S.D.N.Y. Apr. 13, 2012); and Opinion and Order, No. 12 MC 115, ECF No. 427 (S.D.N.Y. Jan. 4, 2013). The following orders shall be docketed in cases with respect to which "Section 546(e)" is listed in the final column of the schedules included as Exhibit B hereto: Order, No. 12 MC 115, ECF No. 119 (S.D.N.Y. May 16, 2012); Order, No. 12 MC 115, ECF No. 439 (S.D.N.Y. Feb. 13, 2013); and Opinion and Order, No. 12 MC 115, ECF No. 460 (S.D.N.Y. Apr. 15, 2013).The following order shall be docketed in cases with respect to which "Extraterritoriality" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding Extraterritoriality Issues, No. 12 MC 115, ECF No. 167(S.D.N.Y. June 7, 2012). The following order shall be docketed in cases with respect to which "Good Faith" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding the "Good Faith" Standard, No. 12 MC 115, ECF No. 197(S.D.N.Y. June 25, 2012).The following orders shall be docketed in cases with respect to which "Section 550(a)" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding 11 U.S.C. § 550(a), No. 12 MC 115, ECF No. 314 (S.D.N.Y. Aug. 22, 2012); and Order Regarding 11

Designation Number	Date	ECF Number (12-mc-115)	Docket Text
			U.S.C. § 550(a), No. 12 MC 115, ECF No. 422 (S.D.N.Y. Dec. 12, 2012). The following orders shall be docketed in cases with respect to which "Section 502(d)" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding 11 U.S.C. § 502(d), No. 12 MC 115, ECF No. 155 (S.D.N.Y. June 1, 2012); and Order Regarding 11 U.S.C. § 502(d), No. 12 MC 115, ECF No. 435 (S.D.N.Y. Feb. 13, 2013). The following order shall be docketed in cases with respect to which "[Standing and SLUSA]" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding Standing and SLUSA Issues, No. 12 MC 115, ECF No. 114 (S.D.N.Y. May 18, 2012). The following order shall be docketed in cases with respect to which "Antecedent Debt" is listed in the final column of the schedules included as Exhibit B hereto: Order Regarding Antecedent Debt Issues, No. 12 MC 115, ECF No. 107 (S.D.N.Y. May 16, 2012). (Signed by Judge Jed S. Rakoff on 6/5/2013) (js) Modified on 6/11/2013 (js). (Entered: 06/11/2013)
3	10/22/2012	401	TRANSCRIPT of Proceedings re: CONFERENCE held on 10/12/2012 before Judge Jed S. Rakoff. Court Reporter/Transcriber: Thomas Murray, (212) 805-0300. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/16/2012. Redacted Transcript Deadline set for 11/29/2012. Release of Transcript Restriction set for 1/25/2013.(Moya, Goretti) (Entered: 10/22/2012)
4	09/28/2012	361	SUPPLEMENTAL REPLY MEMORANDUM OF LAW in Support re: 290 MOTION to Dismiss Claims Where The Trustee Has Pled No Individualized Allegations of "Willful Blindness".. Document filed by Good Faith Defendants. (Boccuzzi, Carmine) (Entered: 09/28/2012)

Designation Number	Date	ECF Number (12-mc-115)	Docket Text
5	09/14/2012	346	BRIEF re: 243 Brief, BLMIS Customers' Consolidated Reply Brief Responding to the Good Faith Issues Raised by Order of the Court Entered on June 25, 2012. Document filed by Alpha Prime Fund Limited. (Duffy, Todd) (Entered: 09/14/2012)
6	09/14/2012	345	BRIEF re: 242 Brief, 324 Memorandum of Law in Opposition, 320 Brief Consolidated Reply Brief on Behalf of Subsequent Transferee Defendants Responding to the Good Faith Standard Issues Raised by Order of the Court Dated June 23, 2012. Document filed by Subsequent Transferee Defendants. (Fisher, Eric) (Entered: 09/14/2012)
7	09/14/2012	341	BRIEF Supplemental Memorandum of Law of the Securities Investor Protection Corporation Addressing the Good Faith Issues. Document filed by Securities Investor Protection Corporation. (Attachments: # 1 Affidavit of Service) (Bell, Kevin) (Entered: 09/14/2012)
8	08/31/2012	324	MEMORANDUM OF LAW in Opposition to Memorandum of in Opposition to the (1) BLMIS Customers Consolidated Brief Responding to Good Faith Issues; and (2) Consolidated Brief on Behalf of Subsequent Transferee Defendants Responding to The Good Faith Standard Issues. Document filed by Irving H. Picard. (Warshavsky, Oren) (Entered: 08/31/2012)
9	08/31/2012	320	BRIEF Memorandum of Law of the Securities Investor Protection Corporation Addressing the Good Faith Issues. Document filed by Securities Investor Protection Corporation. (Attachments: # 1 Affidavit of Service) (Bell, Kevin) (Entered: 08/31/2012)
10	08/10/2012	292	SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 290 MOTION to Dismiss Claims Where The Trustee Has Pled No Individualized Allegations of "Willful Blindness".. Document filed by Good Faith Defendants. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C-1, # 4 Exhibit C-2, # 5

Designation Number	Date	ECF Number (12-mc-115)	Docket Text
			Exhibit C-3, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F)(Boccuzzi, Carmine) (Entered: 08/10/2012)
11	08/10/2012	290	MOTION to Dismiss Claims Where The Trustee Has Pled No Individualized Allegations of "Willful Blindness". Document filed by Good Faith Defendants. Return Date set for 10/12/2012 at 04:00 PM.(Boccuzzi, Carmine) (Entered: 08/10/2012)
12	08/10/2012	287	SUPPLEMENTAL MEMORANDUM OF LAW in Support re: 286 MOTION to Dismiss on Behalf of Leverage Providers.. Document filed by ABN AMRO Bank (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Bank (Ireland) Ltd.), ABN AMRO Custodial Services (Ireland) Ltd., ABN AMRO Retained Custodial Services (Ireland) Limited. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J)(Harris, Christopher) (Entered: 08/10/2012)
13	08/10/2012	286	MOTION to Dismiss on Behalf of Leverage Providers. Document filed by ABN AMRO Bank (Ireland) Ltd. (f/k/a Fortis Prime Fund Solutions Bank (Ireland) Ltd.), ABN AMRO Custodial Services (Ireland) Ltd., ABN AMRO Retained Custodial Services (Ireland) Limited.(Harris, Christopher) (Entered: 08/10/2012)
14	07/20/2012	243	BRIEF re: 197 Order, Set Deadlines/Hearings, BLMIS Customers' Consolidated Brief Responding to the Good Faith Issues Raised by Order of the Court Entered on June 25, 2012. Document filed by Alpha Prime Fund Limited, Senator Fund SpA.(Duffy, Todd) (Entered: 07/20/2012)
15	07/20/2012	242	BRIEF re: 197 Order, Set Deadlines/Hearings, Consolidated Brief On Behalf Of Subsequent Transferee Defendants Responding To The Good Faith Standard Issues Raised By Order Of The Court Dated June 23, 2012. Document filed by Subsequent

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			Transferee Defendants.(Fisher, Eric) (Entered: 07/20/2012)
16	06/25/2012	204	ORDER: BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS: The reference of the Adversary Proceedings listed in Exhibit A is withdrawn, in part, from the Bankruptcy Court to this Court solely with respect to the Good Faith Standard Defendants for the limited purpose of hearing and determining whether SIPA and other securities laws alter the standard the Trustee must meet in order to show that a defendant did not receive transfers in "good faith" under either 11 U.S.C. § 548(c) or 11 U.S.C. § 550(b). Except as otherwise provided herein or in other orders of this Court, the reference to the Bankruptcy Court is otherwise maintained for all other purposes; On or before July 20, 2012, the Initial Transferee Defendants and the Subsequent Transferee Defendants shall each file a consolidated memorandum of law, not to exceed forty(40) pages, each addressing the Good Faith Standard Issues (the "Initial Transferee Good Faith Standard Brief" and the "Subsequent Transferee Good Faith Standard Brief"; collectively, the "Opening Good Faith Standard Briefs"). On or before August 10, 2012, the Good Faith Standard Defendants may file up to five (5) separate supplemental briefs reflecting materially relevant differences between identifiable subgroups of defendants to raise issues relevant to each subgroup, and which may seek dismissal, but which are not otherwise raised or addressed in the Opening Good Faith Standard Briefs (each, "Supplemental Good Faith Standard Brief," and together with the Opening Good Faith Standard Briefs, the "Good Faith Standard Briefs"), with each such Supplemental Good Faith Standard Brief not to exceed eight (8) pages; On or before August 31, 2012, the Trustee and SIPC shall each file a memorandum of law in opposition to the Opening Good Faith Standard Briefs, not to exceed forty (40) pages each, addressing the Good Faith Standard Issues; On or before September 14, 2012, the Initial Transferee

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			<p>Defendants and Subsequent Transferee Defendants shall each file a consolidated reply brief, not to exceed twenty (20) pages; On or before September 14, 2012, the Trustee and SIPC may either (i) each file a separate memorandum of law in opposition to each Supplemental Good Faith Standard Brief filed with the Court, with each opposition not to exceed eight (8) pages or (ii) choose to file separate consolidated memoranda of law in opposition to the Supplemental Good Faith Standard Briefs with such consolidated brief(s) filed by the Trustee and SIPC not to exceed a total of forty (40) pages in the aggregate for each of the Trustee and SIPC; Young Conaway Stargatt & Taylor, LLP, which is conflicts counsel for the Trustee, and Windels Marx Lane & Mittendorf, LLP, which is special counsel to the Trustee, each may file a joinder, not to exceed two (2) pages (excluding exhibits), on behalf of the Trustee in certain of the adversary proceedings listed on Exhibit A hereto, to the Trustee's opposition to (i) the Opening Good Faith Standard Briefs on or before August 31, 2012 and (ii) to each Supplemental Good Faith Standard Brief on or before September 14, 2012; The Court will hold oral argument on the matters raised in the Good Faith Standard Briefs filed by the Good Faith Standard Defendants and the Trustee's and SIPC's oppositions thereto on October 12, 2012, at 4:00 p.m. (the "Good Faith Standard Hearing Date"); All communications and documents (including drafts) exchanged between and among any of the defendants in any of the adversary proceedings, and/or their respective attorneys, shall be deemed to be privileged communications and/or work product, as the case may be, subject to a joint interest privilege; The procedures established by this Order, or by further order of this Court, shall constitute the sole and exclusive procedures for determination of the Good Faith Standard Issues in the Adversary Proceedings (except for any appellate practice resulting from such determination), and this Court shall be the forum for such determination. To the extent that briefing, or argument schedules were</p>

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			previously established with respect to the Good Faith Standard Issues in any of the Adversary Proceedings, this Order supersedes all such schedules solely with respect to the Good Faith Standard Issues. To the extent that briefing, or argument schedules are prospectively established with respect to motions to withdraw the reference or motions to dismiss in any of the Adversary Proceedings, the Good Faith Standard Issues shall be excluded from such briefing or argument and such order is vacated. For the avoidance of doubt, to the extent any of the Good Faith Standard Defendants have issues other than the Good Faith Standard Issues or issues set forth in the other common briefing orders that were withdrawn, those issues will continue to be briefed on the schedule previously ordered by the Court. Except as stated in this paragraph, this Order shall not be deemed or construed to modify, withdraw or reverse any prior order of the Court that granted withdrawal of the reference in any Adversary Proceeding for any reason, and as further set forth within., (Oral Argument set for 10/12/2012 at 04:00 PM before Judge Jed S. Rakoff.) (Signed by Judge Jed S. Rakoff on 6/23/2012) (pl) (Entered: 06/27/2012)
17	06/25/2012	201	MEMORANDUM ORDER: For the foregoing reasons, the Court withdraws the reference of these cases to the bankruptcy court for the limited purposes of deciding: (i) whether SIPA and other securities laws alter the standard the Trustee must meet in order to show that a defendant did not receive transfers in "good faith" under 11 U.S.C. § 548(c); (ii) whether the Trustee may, consistent with non-bankruptcy law, avoid transfers that Madoff Securities purportedly made in order to satisfy antecedent debts; (iii) whether 11 U.S.C. § 546(e) applies to these cases, limiting the Trustee's ability to avoid transfers; (iv) whether provisions of the IRC and ERISA that mandated withdrawals from customers' Madoff Securities accounts prevent the Trustee from avoiding the required withdrawals as fraudulent; (v) whether, after the United States Supreme Court's

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			recent decision in Stern v. Marshall, 131 S. Ct. 2594 (2011), final resolution of claims to avoid transfers as fraudulent requires an exercise of "judicial Power," preventing the bankruptcy court from finally resolving such claims; and (vi) whether, if the bankruptcy court cannot finally resolve the fraudulent transfer claims in this case, it has the authority to render findings of fact and conclusions of law before final resolution. In all other respects, the motions to withdraw are denied. The parties to any case that presents withdrawn issues which are not subject to consolidated briefing should convene a conference call no later than June 4, 2012 to schedule further proceedings. The Clerk of the Court is hereby ordered to close document number 1 on the docket of each case. (Signed by Judge Jed S. Rakoff on 6/25/2012) (pl) (Entered: 06/26/2012)
	06/25/2012	197	ORDER: BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS: The reference of the Adversary Proceedings listed in Exhibit A is withdrawn, in part, from the Bankruptcy Court to this Court solely with respect to the Good Faith Standard Defendants for the limited purpose of hearing and determining whether SIPA and other securities laws alter the standard the Trustee must meet in order to show that a defendant did not receive transfers in "good faith" under either 11 U.S.C. § 548(c) or II U.S.C. § 550(b). Except as otherwise provided herein or in other orders of this Court, the reference to the Bankruptcy Court is otherwise maintained for all other purposes; On or before July 20, 2012, the Initial Transferee Defendants and the Subsequent Transferee Defendants shall each file a consolidated memorandum of law, not to exceed forty(40) pages, each addressing the Good Faith Standard Issues (the "Initial Transferee Good Faith Standard Brief" and the "Subsequent Transferee Good Faith Standard Brief"; collectively, the "Opening Good Faith Standard Briefs"). On or before August 10, 2012, the Good Faith Standard Defendants may file up to five (5) separate supplemental briefs reflecting materially

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			<p>relevant differences between identifiable subgroups of defendants to raise issues relevant to each subgroup, and which may seek dismissal, but which are not otherwise raised or addressed in the Opening Good Faith Standard Briefs (each, "Supplemental Good Faith Standard Brief," and together with the Opening Good Faith Standard Briefs, the "Good Faith Standard Briefs"), with each such Supplemental Good Faith Standard Brief not to exceed eight (8) pages; On or before August 31, 2012, the Trustee and SIPC shall each file a memorandum of law in opposition to the Opening Good Faith Standard Briefs, not to exceed forty (40) pages each, addressing the Good Faith Standard Issues; On or before September 14, 2012, the Initial Transferee Defendants and Subsequent Transferee Defendants shall each file a consolidated reply brief, not to exceed twenty (20) pages; On or before September 14, 2012, the Trustee and SIPC may either (i) each file a separate memorandum of law in opposition to each Supplemental Good Faith Standard Brief filed with the Court, with each opposition not to exceed eight (8) pages or (ii) choose to file separate consolidated memoranda of law in opposition to the Supplemental Good Faith Standard Briefs with such consolidated brief(s) filed by the Trustee and SIPC not to exceed a total of forty (40) pages in the aggregate for each of the Trustee and SIPC; Young Conaway Stargatt & Taylor, LLP, which is conflicts counsel for the Trustee, and Windels Marx Lane & Mittendorf, LLP, which is special counsel to the Trustee, each may file a joinder, not to exceed two (2) pages (excluding exhibits), on behalf of the Trustee in certain of the adversary proceedings listed on Exhibit A hereto, to the Trustee's opposition to (i) the Opening Good Faith Standard Briefs on or before August 31, 2012 and (ii) to each Supplemental Good Faith Standard Brief on or before September 14, 2012; The Court will hold oral argument on the matters raised in the Good Faith Standard Briefs filed by the Good Faith Standard Defendants and the Trustee's and SIPC's oppositions thereto on October</p>

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			<p>12, 2012, at 4:00 p.m. (the "Good Faith Standard Hearing Date"); All communications and documents (including drafts) exchanged between and among any of the defendants in any of the adversary proceedings, and/or their respective attorneys, shall be deemed to be privileged communications and/or work product, as the case may be, subject to a joint interest privilege; The procedures established by this Order, or by further order of this Court, shall constitute the sole and exclusive procedures for determination of the Good Faith Standard Issues in the Adversary Proceedings (except for any appellate practice resulting from such determination), and this Court shall be the forum for such determination. To the extent that briefing, or argument schedules were previously established with respect to the Good Faith Standard Issues in any of the Adversary Proceedings, this Order supersedes all such schedules solely with respect to the Good Faith Standard Issues. To the extent that briefing, or argument schedules are prospectively established with respect to motions to withdraw the reference or motions to dismiss in any of the Adversary Proceedings, the Good Faith Standard Issues shall be excluded from such briefing or argument and such order is vacated. For the avoidance of doubt, to the extent any of the Good Faith Standard Defendants have issues other than the Good Faith Standard Issues or issues set forth in the other common briefing orders that were withdrawn, those issues will continue to be briefed on the schedule previously ordered by the Court. Except as stated in this paragraph, this Order shall not be deemed or construed to modify, withdraw or reverse any prior order of the Court that granted withdrawal of the reference in any Adversary Proceeding for any reason, and as further set forth within. (Oral Argument set for 10/12/2012 at 04:00 PM before Judge Jed S. Rakoff.) (Signed by Judge Jed S. Rakoff on 6/23/2012) (laq) (Entered: 06/25/2012)</p>

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	04/13/2012	1	ORDER: 1. All matters relating to Bernard L. Madoff Investment Securities LLC ("Madoff Securities") previously assigned to the undersigned, or assigned to the undersigned in the future, shall henceforth bear the caption and docket number set forth above, and the parties shall make sure that all filings are filed under the docket number set forth above. In addition, any filings filed under this docket number shall bear either the subheading "PERTAINS TO ALL CASES," the subheading "PERTAINS TO CASE(S) ___ Civ. ___, " or the subheading "PERTAINS TO CASE(S) LISTED IN APPENDIX_." Any filing fees associated with opening the master case file docket are waived. 2. The Clerk is directed to make sure that this Order and all subsequent docket entries under this docket number are also docketed simultaneously in the bankruptcy court under No. 08-1789 (BRL). (Signed by Judge Jed S. Rakoff on 4/13/2012) (laq) (laq). (Entered: 04/13/2012)

II. STATEMENT OF ISSUES TO BE PRESENTED

A. Whether the district court erred by requiring a SIPA trustee to plead, as part of his *prima facie* case for avoidance and recovery of transfers under sections 548 and 550 of the Bankruptcy Code, a transferee's lack of good faith under section 548(c) and 550(b), respectively, even though both are affirmative defenses?

B. Whether the district court erred by elevating the standard used to determine a transferee's lack of good faith from one of inquiry notice in traditional bankruptcy cases to one of willful blindness in SIPA liquidations?

C. Whether the bankruptcy court erred by precluding the Trustee from taking any discovery following the district court's rulings that altered the pleading and proof standards for avoidance and recovery of transfers under section 548 and 550 of the Bankruptcy Code?

D. Whether the bankruptcy court erred by dismissing the Trustee's complaint for failure to state a claim?

Dated: March 4, 2020
New York, New York

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SIPA Liquidation of Bernard L. Madoff
Investment Securities LLC and the Estate of
Bernard L. Madoff*